

# FINAL BILL REPORT

## SB 5284

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**C 109 L 09**  
Synopsis as Enacted

**Brief Description:** Concerning truth in music advertising.

**Sponsors:** Senators Keiser, Holmquist, Kohl-Welles, Pridemore, Marr and Kauffman.

**Senate Committee on Labor, Commerce & Consumer Protection**  
**House Committee on Commerce & Labor**

**Background:** A service mark is a word, phrase, symbol, or combination of words, phrases, or symbols that identify and distinguish the source of a service. The name of a musical recording or performing group could be a service mark.

Service marks are protected intellectual property. Service marks may, but are not required to be, registered with the U.S. Patent and Trademark Office and/or with the Washington Secretary of State. Registration provides certain advantages, including: (1) constructive notice to the public that the registrant owns the mark; and (2) a legal presumption that the registrant owns the mark and has exclusive right to use it. Ownership of a service mark may arise from use, registration, or both. A service mark owner may prevent others from using the mark for the same or similar service. An owner may also prevent others from using the mark for other services or products if such use could be confusing to consumers.

A service mark owner may lose that owner's rights to the exclusive use of a service mark if that owner abandons the service mark. Abandonment may be shown by the owner having notice of another using the service mark and failing to take action to stop the infringement.

To disseminate advertising in any form that is deceptive or misleading is a misdemeanor.

**Summary:** Promoting or conducting a live musical performance through advertising that claims or implies an affiliation between the performing musical group and a recording group is prohibited unless any of the following apply:

- the performance group is the owner and federal registrant of the service mark used;
- at least one member of the performing group was previously a member of the recording group and has a legal right to use the name of or affiliation to the recording group;
- the performance is promoted as a tribute to the recording group and the performance group's name is not so similar to the recording's group so as to mislead the public;

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- the recording group authorized the performance; or
- the performance is not taking place in Washington.

Anyone who violates this prohibition is liable for a civil penalty of at least \$5,000 up to \$15,000 per violation. An action for the civil penalty or other injunctive relief may be brought by the Attorney General or a city or county prosecutor.

**Votes on Final Passage:**

Senate	47	0
House	97	0

**Effective:** July 26, 2009